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SOCIAL DEVELOPMENT, INCLUDING QUESTIONS RELATING TO THE WORLD SOCIAL SITUATION AND TO YOUTH, AGEING, DISABLED PERSONS AND THE FAMILY

Conceptual framework of a programme for the preparation and observance of the International Year of Older Persons in 1999

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 2	3
II.	BACKGROUND	3 - 7	3
III.	OBJECTIVE: PROMOTION OF THE UNITED NATIONS PRINCIPLES FOR OLDER PERSONS	8 - 15	4
IV.	FRAMEWORK	16 - 35	4
	A. Situation of older persons	17 - 21	5
	B. Life-long individual development	22 - 25	6
	C. Multi-generational relationships	26 - 29	6
	D. Development and the ageing of populations	30 - 35	7

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CONTENTS (continued)

		Paragraphs	Page
V.	THEME: TOWARDS A SOCIETY FOR ALL AGES	36 - 38	8
VI.	PRACTICAL PREPARATIONS	39 - 53	9
	A. Activities	39 - 51	9
	B. Global targets on ageing for the year 2001	52	10
	C. Timetable	53	11

I. INTRODUCTION

1. In its resolution 47/5 of 16 October 1992, the General Assembly decided to observe the year 1999 as the International Year of Older Persons.* In its resolution 48/98 of 20 December 1993, the Assembly requested the Secretary-General to draft a conceptual framework of a programme for the preparation and observance of the Year to be submitted to it at its fiftieth session, through the Commission for Social Development.

2. The present report has been prepared in response to those resolutions and in keeping with the Economic and Social Council resolution 1980/67 of 25 July 1980 on the observance of international years and anniversaries.

II. BACKGROUND

3. By the end of the century, 20 years will have been added to the average life. Longevity is one of the great achievements of the twentieth century which, together with declining fertility, is producing a dramatic ageing of the world's population. The ageing of populations has commenced at different times in different countries and is proceeding at varying rates. Generally, however, in the course of a few generations, the proportion of older persons, those aged 60 and above, is increasing from approximately 1 in 14 to 1 in 4.

4. Recognizing ageing as one of the major achievements and, at the same time, challenges of the twentieth century, the United Nations convened the World Assembly on Ageing in 1982, and, in the same year, the General Assembly endorsed the International Plan of Action on Ageing (resolution 37/51). In 1990, the Assembly designated 1 October as the International Day for the Elderly (resolution 45/106), and one year later, in 1991, it adopted the United Nations Principles for Older Persons (resolution 46/91). In 1992, the Assembly adopted a practical strategy for the decade 1992-2001 entitled "global targets on ageing for the year 2001" (resolution 47/86).

5. Observance of the International Year of Older Persons in 1999 is the next stage in the evolution of the United Nations programme on ageing. In elaborating the conceptual framework of a programme for the Year, four dimensions emerged: the situation of older persons; the life-long individual development; multi-generational relationships; and the relationship between development and the ageing of populations.

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* The term "older person" rather than "elderly" is being used in the present report, as it was in General Assembly resolutions 47/5 and 48/98. In Assembly decision 48/433 of 20 December 1993, however, the term "elderly" is used. Clarification of the preferred term for the Year needs to be made at the thirty-fourth session of the Commission for Social Development.

6. The four dimensions of ageing are introduced in section IV below for consideration by the Commission and for exploration and elaboration in the coming years, both conceptually and in terms of practical programmes, through broad-based consultations both within and between generations and sectors of society at the local, national, regional and global levels.

7. The broad-based framework that is being proposed would benefit from having a unifying theme, as discussed in section V below, and from an overall objective, as proposed in section III.

III. OBJECTIVE: PROMOTION OF THE UNITED NATIONS PRINCIPLES FOR OLDER PERSONS

8. It is proposed that the overall objective of the Year should be the promotion of the United Nations Principles for Older Persons, their translation into policy, as well as practical programmes and actions.

9. The 18 Principles are organized in five clusters: independence, participation, care, self-fulfilment and dignity.

10. The independence Principles state that older persons need access to basic services and care, opportunities to work or make income, ability to influence the pace of withdrawal from the labour force, access to education and training opportunities, safe living environments and support to reside at home for as long as possible.

11. The participation Principles address decision-making, dissemination of knowledge, community service and the formation of movements or associations of older persons.

12. The care Principles address issues of family and community care, access to health, social and legal services, and matters pertaining to institutional care.

13. The self-fulfilment Principles call for older persons to have opportunities for full development of their potential and access to educational, cultural, spiritual and recreational resources of society.

14. The dignity Principles address issues of exploitation and physical or mental abuse, fair treatment and being valued independently of economic contribution.

15. The translation of the Principles into reality will require both initiative by older persons and the establishment of an enabling environment by the rest of society.

IV. FRAMEWORK

16. The four dimensions of a broad conceptual framework within which the United Nations Principles for Older Persons could be promoted are introduced briefly

below with a view to fostering society-wide consultations on their meaning for different generations and sectors of society.

A. Situation of older persons

> "... the transition to a positive, active and developmentally oriented view of ageing may well result from action by elderly people themselves, through the sheer force of their growing numbers and influence. The collective consciousness of being elderly, as a socially unifying concept, can in that way become a positive factor" (International Plan of Action on Ageing, 1/ para. 32).

17. The Plan of Action discusses the multi-dimensional nature of ageing. It draws attention to the potential of older persons to take action in ensuring a positive and developmentally oriented view of old age. It points to the need for policies and programmes to reflect the aspirations of older persons, for example, by permitting a balance of material and spiritual well-being. The Plan of Action lists 62 recommendations for action in the areas, inter alia, of education, employment and income security, housing and the environment, health and hygiene, social welfare and the family. These recommendations have been expressed in more operational terms in the global targets on ageing for the year 2001 (A/47/339, sect. III).

18. Among the sectoral issues, ensuring the means of livelihood and income security for older persons has become a major concern for all countries. The economic situation of older persons is affected in many places by loosening attachments to the workforce, skills obsolescence, devaluation of savings and pensions, and old-age as well as family and society-wide poverty. In this context, the situation of older women gives rise to particular concern as they tend to live longer than men do and with fewer resources and societal entitlements.

19. Pre-industrial societies, though constrained in other ways, generally provide older persons with multiple and meaningful roles. In post-industrial societies, as they become more service and information-oriented, roles resembling those prevailing in traditional societies can often be recovered in form, if not content. These may include, for example, participation in micro-enterprises and cooperatives, modern applications of traditional healing; cultural transmission in kindergartens, schools and universities; advisory services; and, in situations of conflict, active roles as mediators and counsellors.

20. In developing policies for the older population, its heterogeneity must be borne in mind, as must the particular circumstances of certain groups of older persons, such as migrants, refugees, older persons without families, destitute elders and the frail. Frail older persons, for example, require a continuum of care from home-help, which supports "ageing in place", to institutional care, when independent living is no longer possible.

21. In preparing for the Year, the discussion and specific measures outlined in the International Plan of Action on Ageing and the global targets on ageing for

the year 2001 may serve as catalysts for practical actions supporting the independence, participation, care, self-fulfilment and dignity of older persons as stated in the Principles.

B. Life-long individual development

"Ageing is a life-long process and should be recognized as such. Preparation of the entire population for the later stages of life should be an integral part of social policies and encompass physical, psychological, cultural, religious, spiritual, economic, health and other factors" (International Plan of Action on Ageing, para. 25 (i)).

22. Ageing of the individual in the strict sense means growing old. It can also signify life-long growth and development in physical, economic, psychological, cultural, spiritual and other ways. The expectation of active participation in later years can positively influence personal development choices made earlier in life.

23. Individual development through the different stages of the life cycle requires both individual initiative and an enabling environment. Individual development can be viewed as a process of interaction between the individual and society which can be mutually beneficial. At the individual level, this implies conscious effort to combine individual independence with contributory/participatory behaviour, while striving towards self-development through life-long education, upgrading of skills and healthy lifestyles. Society, for its part, needs to accord equal importance to the challenges of each stage of the life cycle.

24. Accomplishments and life skills developed earlier in life can compensate in many ways for some, mainly physical, limitations that are experienced in old age. Such limitations can be mitigated by a supportive environment of family, community and society at large.

25. When the majority of individuals can pursue life-long individual development, an ageing population can reach maturity not only in terms of demography, but also of intellect and emotion. This would help to ensure, among other things, that the years added to life could be infused with a new sense of purpose and liveliness appreciated at both individual and collective levels.

C. Multi-generational relationships

"The respect and care for the elderly, which has been one of the few constants in human culture everywhere, reflects a basic interplay between self-preserving and society-preserving impulses which has conditioned the survival and progress of the human race" (International Plan of Action on Ageing, para. 27).

26. Traditional self-preserving and society-preserving impulses are being challenged by demographic trends and other societal changes, giving rise to a

need for new intergenerational exchanges in the family, local community and national society, including in the areas of care-giving, income security and cultural definition.

27. The family is the first and most intimate level of multi-generational relationship, where all tend to invest in one another and share in the fruits of that investment; it has been termed the "first resource and last resort" for its members. Families, however, are experiencing demographic, cultural and socio-economic changes with implications for intra-familial relationships, including in care-giving. The changes both challenge and bring opportunities to multi-generational relationships.

28. Communities can facilitate multi-generational relationships, both within neighbourhoods and between special interest groups. Though undergoing change, the neighbourhood community is usually age-integrated, making interactions between its younger and older members a matter of daily routine. Communities of special interest, such as organizations of elders or youth, can establish new relationships in addressing community concerns such as safety, environmental protection, cultural enrichment, income-generation and others. Communities can also facilitate communications between younger and older generations, particularly in the exchange of new and old technologies and new and traditional lifestyles.

29. At the national level, many developed countries are currently revising multi-generational exchanges, including the provision of social insurance and pensions, underscoring the importance for countries which are ageing later to develop their own appropriate national-level exchanges between the generations to ensure a multi-generational consensus within society.

D. Development and the ageing of populations

> "Countries should recognize and take into account their demographic trends and changes in the structure of their populations in order to optimize their development" (International Plan of Action on Ageing, para. 13).

30. Demographic ageing affects the size and proportion of the various cohorts, changing young and old dependency ratios and the size of the working population. As a consequence, employment, social security, social welfare, education and health care, as well as investment, consumption and savings patterns, need adjustment.

31. Developed countries, for example, are adjusting macro-level policies for income security in old age, generally introducing a mix of measures encompassing various pension and social security schemes, incentives for life-long saving, and flexible work and retirement patterns.

32. Developing countries generally advocate a three-fold approach to income security for older persons: support for their family and community structures; priority to rural development so as to stem the out-migration of youth; and opportunities for older persons to have a means of livelihood, including through

participation in cooperative, micro- or family enterprises and through access to training and credit.

33. Providing adequate income security to older persons is especially challenging in newly industrialized countries where populations have aged rapidly and in countries in transition from central planning where resources and infrastructure are lacking.

34. Macro-level decisions can also help to ensure that the total living environment supports multi-generational exchanges, active ageing in place and a culture of caring from which all benefit, by for example, establishing programmes to support self-help and family care-giving, as well as by encouraging a continuum of housing arrangements from "granny flats" to community-integrated long-term care facilities.

35. In periods of demographic and socio-economic transition, reference to the United Nations Principles for Older Persons can help to ensure that macro-level policies take into account the independence, participation, care, self-fulfilment and dignity of older persons. In preparing for the Year, studies could be undertaken on the integration of ageing into the development plans of countries at varying stages of demographic and socio-economic transition.

V. THEME: TOWARDS A SOCIETY FOR ALL AGES

36. Clearly, ageing is a multidimensional, multisectoral and multi-generational issue. It encompasses the situation of older persons, the individual's life-long development, relationships between the generations and the relationship between ageing and the development of society.

37. A suitable theme for the Year, therefore, would be one that encompassed the four dimensions of the framework and allowed for priority to be given to promoting the United Nations Principles for Older Persons, the Year's objective. The concept of a "society for all ages" could provide such an integrative theme.

38. The meaning of "a society for all" has been explored by Member States participating in the World Summit for Social Development at Copenhagen, and is elaborated in the Summit's Programme of Action adopted at the World Summit. A society for all is seen as an inclusive society which must be based upon respect for all human rights and fundamental freedoms, cultural and religious diversity, social justice, democratic participation and the rule of law. Thus, we may think of a society for all as one that adjusts its structures and functioning, as well as its policies and plans, to the needs and capabilities of all, thereby releasing the potential of all, for the benefit of all. A "society for all ages" would, additionally, enable the generations to invest in one another and share in the fruits of that investment, guided by the twin principles of reciprocity and equity.

VI. PRACTICAL PREPARATIONS

A. Activities

39. The all-encompassing theme of "towards a society for all ages" opens the Year wide for the participation of all generations and many sectors and organizations. A society for all ages can be best experienced at the local level, but requires the support of a national debate and a programme of practical activities encompassing, for example, the promotion of the United Nations Principles for Older Persons within the proposed four-dimensional conceptual framework. Regional and global activities could facilitate, inter alia, the exchange of information and experiences, thereby acting as a catalyst for good practices and innovations in responding to the ageing of population while generating awareness of the possibilities ahead of a "new age for old age".

40. To promote collaboration among the many actors who could participate in observing the Year, Governments and local authorities, as well as intergovernmental and major non-governmental organizations, may wish to appoint focal points or collaborative committees for the Year.

41. The Department for Policy Coordination and Sustainable Development, serving as the global focal point for the Year, will facilitate consultations on the objective, framework and theme of the Year as a contribution to the debate in the Commission for Social Development at its thirty-fifth session and the General Assembly at its fifty-second session, in 1997.

42. The Department will devote its mandated activities on ageing, such as publications and surveys, to preparations for the Year. As resources permit, the Department will maintain a database of the main actors and activities in order to promote exchange of experience and to facilitate monitoring. The Department will endeavour to engage the support of all the actors traditionally involved in issues concerning ageing, including ministries and national mechanisms on ageing, organizations of older persons and gerontological research institutes. Efforts will also be made to engage non-traditional actors such as enterprises, trade unions, foundations, youth organizations, the media, mayors and leading citizens (such as goodwill ambassadors for the Year).

43. Immediately after the thirty-fourth session of the Commission for Social Development, the Department will host an informal meeting of interested United Nations agencies and bodies to explore individual and joint initiatives for the Year. This meeting will launch a continuing consultative process within the United Nations system on preparations for the Year.

44. The Department will disseminate the United Nations Principles for Older Persons, together with suggestions for their translation, distribution, publication, discussion in the media, schools and community centres, as well as their possible use in policy and programme development.

45. To promote action for improving the situation of older persons (the first of the four facets of the framework) the Department will disseminate the short guide for setting national targets (A/47/339, sect. IV), which is a compendium

of 38 measures recommended in the areas of infrastructure, health and nutrition, housing and living environment, family, education and media, social welfare, employment and income security.

46. The Department will generate a debate and, as resources permit, studies on "life-long ageing" and multi-generational relationships, including through the medium of the Bulletin on Ageing, with, as available, the assistance of research institutes and organizations.

47. The third edition of the World Ageing Situation, to be issued in 1997 in response to General Assembly resolution 41/96 of 4 December 1986, will explore the relationship of ageing and development in countries at different stages of socio-economic and demographic development as an aid to integrating ageing into development plans.

48. By focusing its ongoing activities towards the objective, framework and theme of the Year, as outlined above, the Department will assist Member States and organizations in launching their own programmes for the Year. This approach will enable the Secretariat to promote the Year while staying within the regular budget, in keeping with the decision of the General Assembly that funding for the Year should be from the regular programme budget for the biennium 1998-1999 and by voluntary contributions (resolution 47/5).

49. Member States and organizations are invited to support observance of the Year through contributions to the Trust Fund for Ageing or the Banyan Fund Association: A World Fund for Ageing, or through contributions in kind, such as staffing to assist in maintaining a central reporting and monitoring function. Monitoring and evaluation of the Year could form the basis of a follow-up programme for the decade 2001-2010 for review by the General Assembly in 2001.

50. Since the activities proposed for the Year fit within the mandates of several international funds, such as the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM) and the United Nations Children's Fund (UNICEF), these and other entities will be invited to consider ways and means of supporting the Year.

51. Early indications suggest that the Year will be well supported. Already, some 60 contributions were made to the present report from 25 countries, including national mechanisms on ageing and non-governmental organizations. Several responses were made on behalf of global constituencies of professional and other groups. One organization of older persons has already established a global network entitled "Coalition 99" to generate a dialogue and action for the Year.

B. Global targets on ageing for the year 2001

52. The practical strategy which the General Assembly adopted in 1992 entitled "global targets on ageing for the year 2001" (comprising global and national sections) provides a useful organizational tool at the global level for supporting regional, national and local actions. The constituent elements of the global targets can help to facilitate collaboration among many actors; these

elements include enabling steps, lists of entities involved, suggestions for resource mobilization, and evaluation and reporting measures. The eight global targets can be adapted to support the objective, framework and theme of the Year. They are:

1. Support countries in setting national targets on ageing.

2. Generate support for integrating ageing into national and international development plans and programmes.

3. Generate support for community-based programmes of care and participation of older persons.

4. Improve cross-national research on ageing, including harmonization of terminology and methodology.

5. Include an item on ageing in international events and meetings of relevance.

6. Establish a global network of senior volunteers for social and economic development.

7. Facilitate closer cooperation among non-governmental organizations on ageing.

8. Facilitate closer cooperation among intergovernmental organizations on ageing.

C. Timetable

53. Current and mandated activities of the United Nations programme on ageing are listed below, briefly, adjusted to the needs of the International Year of Older Persons and responsive to other international events being observed in the meantime:

1995

- Conceptual framework of a programme for the preparation and observance of the International Year of Older Persons presented to the General Assembly after deliberation at the thirty-fourth session of the Commission for Social Development, to be held from 10 to 20 April.

- Inter-agency Meeting on Ageing, 21 April.

- Consultations of non-governmental organizations, ongoing.

- Observance of the International Day for the Elderly, 1 October (themes: fiftieth anniversary of the United Nations and older women).

- Bulletin on Ageing (theme: Fourth World Conference on Women: situation of older women).

1996

- Global dissemination of the recommendations of the General Assembly for observing the Year, together with the survey for the fourth review and appraisal of the implementation of the International Plan of Action on Ageing, February.

- Observance of the International Day for the Elderly, 1 October (theme: poverty and old age in the context of International Year for the Eradication of Poverty).

- Inter-agency Meeting on Ageing, date to be determined.

- Issue of the Bulletin on Ageing (theme: poverty and old age).

- Consultations of non-governmental organizations, ongoing.

1997

- The General Assembly reviews the programme for observing the International Year of Older Persons.

- The General Assembly receives the fourth review of implementation of the International Plan of Action on Ageing, conducted by the Commission for Social Development at its thirty-fifth session.

- Observance of the International Day for the Elderly, 1 October (theme: multi-generational relationships).

- Bulletin on Ageing (theme: life-long ageing and multi-generational relationships).

- Inter-agency Meeting on Ageing, date to be determined.

- Consultations of non-governmental organizations, ongoing.

- World Ageing Situation, third edition (proposed theme: integrating ageing into development, world-wide challenge)

1998

- Launching of the programme of observances for the International Year of Older Persons.

- International Day for the Elderly, 1 October: launching of the global information campaign for the International Year of Older Persons.

- Inter-agency Meeting on Ageing, date to be determined.

- Bulletin on Ageing (theme: the International Year of Older Persons).

- Consultations of non-governmental organizations, ongoing.

1999

- The General Assembly receives a progress report on observance of the International Year of Older Persons.

- The Assembly marks the Year in plenary (proposed).

- World conferences of older persons to be convened as political will and resources are raised.

- International Day for the Elderly (theme: International Year of Older Persons).

2001

- The General Assembly evaluates the observance of the International Year of Older Persons, and receives the fifth review of implementation of the International Plan of Action on Ageing conducted by the Commission for Social Development.

Notes

1/ Report of the World Assembly on Ageing, Vienna, 26 July to 6 August 1982 (United Nations publication, Sales No. E.82.I.16), chap. VI, sect. A.

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Report of the Secretary-General

CONTENTS

		Page
I.	INTRODUCTION	2
II.	REPLIES RECEIVED FROM GOVERNMENTS	2
	Canada	2
	Colombia	2
	Costa Rica	4
	France (on behalf of the European Union)	5
	Kazakhstan	10
	Latvia	10
	Nigeria	11
	Philippines	12
	Qatar	14
	South Africa	14
	Suriname	19

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I. INTRODUCTION

1. On 15 December 1994, the General Assembly adopted resolution 49/75 F entitled "1995 Review and Extension Conference of States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons", the operative part of which reads, inter alia, as follows:

> "2. Invites States parties to provide their legal interpretations of article X, paragraph 2, of the Treaty and their views on the different options and actions available, for compilation by the Secretary-General as a background document of the 1995 Review and Extension Conference of States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, well before the holding of that Conference."

2. Pursuant to that request of the General Assembly, the Secretary-General, in a note verbale dated 20 January 1995, invited States parties to provide their views on this matter. The replies received thus far are reproduced in section II of the present report.

II. REPLIES RECEIVED FROM GOVERNMENTS

CANADA

[Original: English]

[20 March 1995]

The Government of Canada supports indefinite extension of the Treaty on the Non-Proliferation of Nuclear Weapons. One of the many advantages of this option is precisely that it is not subject to potentially disruptive legal uncertainty. Canada has therefore not seen the need to explore in depth the legal complexities which might attend an extension for a fixed period or for fixed periods. Indefinite extension is plain, simple and permanent.

COLOMBIA

[Original: Spanish]

[28 February 1995]

1. Article X, paragraph 2, should be interpreted in the context of the Treaty.

The object and purpose of the Treaty

2. The decision on which the modality of extension should be adopted depends on the evaluation by the parties of compliance with the Treaty's provisions and their evaluation of its operation. That review will take place in the light of the object and purpose of the Treaty.

3. Review of compliance with the obligations of the parties and evaluation of the operation of the Treaty in the light of its object and purpose lead us into the field of the interpretation of treaties. In this regard, we believe that article 31 of the 1969 Vienna Convention on the law of treaties states the general rule for the interpretation of treaties.

4. That rule, which is known as the rule of the ordinary meaning or the rule of context, was unanimously agreed upon by the International Law Commission when it elaborated the draft articles which were finally adopted as part of the text of the above-mentioned Vienna Convention.

5. In the matter of interpretation, we find a number of similar rulings by the Permanent Court of International Justice, including the decision in the affair of the Polish postal service in Danzig, and by its successor, the International Court of Justice, in several rulings, of which we may mention its advisory opinion on the interpretation of the peace treaties between Bulgaria, Hungary and Romania (phase II), the case of the rights of nationals of the United States of America in Morocco, and the cases concerning south-west Africa.

6. With regard to the Treaty, it is enough to consider the ordinary meaning of the terms in order to understand its object and purpose, the specific obligations it imposes, its control and safeguard mechanisms, and the modalities for its extension.

7. It would also be useful to mention that the Treaty itself explicitly provides in article VIII, paragraph 3, for the obligation of the parties to review at intervals the operation of the Treaty with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized.

Obligations of parties under the Treaty

8. The Treaty on the Non-Proliferation of Nuclear Weapons, as its name indicates, had as its objective the non-proliferation of such weapons and their eventual elimination. The relevant norms setting out that objective are contained mainly in the 13 preambular paragraphs of the Treaty and in article VI.

9. The Treaty sets out in very clear terms certain obligations on the part of nuclear-weapon States Parties. These obligations are set forth mainly in article I, while the obligations on the part of non-nuclear-weapon States parties are set out mainly in article II. All of this is without prejudice to the right of non-nuclear weapon States to develop nuclear technology and material for peaceful purposes, as provided in article IV.

10. The Treaty also establishes a system of controls and safeguards, as set out in article III, and creates, as mentioned before, a mechanism for periodic review in the form of conferences of the parties held for that purpose.

Final comments

11. The preamble, article VI and the other articles of the Treaty on the Non-Proliferation of Nuclear Weapons constitute an unequivocal reflection of the will of the States parties in the matter.

12. On this occasion, the Conference of the parties will have the twin task of reviewing compliance with the obligations assumed under the Treaty and deciding on the modalities of its extension. Moreover, this will be the last occasion for review during this first period of the operation of the Treaty, before a decision is adopted on the modality of its extension. The exercise in which the parties will have to engage will be to verify one by one the obligations assumed by them, which are contained in the preamble and in each and every one of the articles, and to take a decision on the appropriate modality of extension.

13. Finally, it is useful to note that the practice that has been followed in conferences for the review of the Treaty and in adopting decisions in accordance with the rules of procedure, has been to seek consensus, without excluding the possibility, of course, that decisions might be taken by vote. The importance of having any decision on the extension of the Treaty adopted by consensus instead of by a vote is obvious.

COSTA RICA

[Original: Spanish]

[16 February 1995]

1. The Government of Costa Rica considers that article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons should be interpreted in accordance with the ordinary meaning of its terms in the light of its object and purpose. The text literally authorizes the Conference of States Parties to extend this international instrument indefinitely or for an additional fixed period or periods, or not to extend it. Consequently, only a possible unconditional extension, whether for an indefinite period or for an additional fixed period or periods, is expressly authorized by the text of the Treaty.

2. However, the Government of Costa Rica recognizes that, in accordance with article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, it would be possible in law to have a broader interpretation of this article in good faith. Consequently, the Government of Costa Rica is of the view that the parties should not exclude the possibility that other modalities of extension, such as a conditional extension or an extension for a given number of periods at the end of which a further conference of the parties could decide on another extension, might be legally valid and applicable to the Treaty.

3. Therefore, the Government of Costa Rica considers that any decision to extend the Treaty using any of the established modalities would be in compliance with the Treaty's provisions. The mandate of the Conference of States Parties is limited to the application of article X of the Treaty and does not include amendment of that article. For this reason, the Government of Costa Rica

considers that the decision of the Conference will be fully binding on all parties without need for any subsequent statement of willingness to be so bound.

4. On the other hand, the Government of Costa Rica considers that, in as much as the use or threat of use of nuclear weapons constitute violations of international law and, in particular, of human rights norms having the character of jus cogens, the possible extension of the Treaty and the fact that States continue to be parties to it should not be interpreted as recognition of the legality of the use, threat of use or possession of nuclear weapons, but merely as a preliminary step on the road to the ultimate complete prohibition of such weapons. The position of Costa Rica with regard to these principles is unalterable.

5. Finally, with respect to the possible modalities of extension, the Government of Costa Rica considers it vital to unconditionally and indefinitely extend the Treaty on the Non-Proliferation of Nuclear Weapons.

FRANCE

(on behalf of the European Union)

[Original: French]

[12 March 1995]

1. By a note verbale dated 20 January 1995, the Secretary-General drew attention to General Assembly resolution 49/75 F, which calls for the compilation, by the Secretary-General, of a background document containing the views of Member States of the Organization on the legal interpretation of article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons.

2. During the forty-ninth session of the General Assembly, the European Union voted against the draft resolution in question. That position, which was shared by the Depositary States, was founded on the fact that the legal interpretation of the Treaty was the exclusive responsibility of the parties and that it was, a priori, not up to the Secretariat to compile a document on the matter. The negative vote was further justified by the fact that there was consensus, during the third session of the Preparatory Committee for the 1995 Review and Extension Conference of the NPT, that the request for legal interpretations should be referred to the fourth session, which was held in January 1995.

3. The European Union had, during the third session of the Preparatory Committee, held at Geneva from 12 to 16 September 1994, already distributed a document on the options and modalities for extending the Treaty. This document, which was issued under the symbol NPT/CONF.1995/PC.III/14, is annexed hereto.

4. Notwithstanding its reservations concerning the procedure envisaged in resolution 49/75 F, and in view of the importance of this matter and the concern of the European Union to ensure that its analysis is disseminated as broadly as possible, France, which is currently President of the European Union, requests

that the aforementioned working document be incorporated in the compilation being undertaken by the Secretariat.

ANNEX

EUROPEAN UNION

1. The European Union has produced this paper on the question of options and modalities for extending the Treaty on the Non-Proliferation of Nuclear Weapons in order to facilitate further discussion of these matters among all parties.

EXTENSION OPTIONS

Basic extension options

2. Article X, paragraph 2 of the Treaty means that at the Extension Conference in 1995 the parties can only choose between three basic options:

(a) Indefinite extension;

(b) Extension for an additional fixed period;

(c) Extension for additional fixed periods.

3. The option of extension for additional fixed periods only makes sense if it is accompanied by some decision-making mechanism enabling the parties to decide at the end of each fixed period whether to move on to the next one. Without such a mechanism extension for an unlimited number of additional fixed periods would equate to indefinite extension. Similarly, without such a mechanism extension for a limited number of additional fixed periods would equate to extension for one additional fixed period.

Implications of indefinite extension

4. If the parties choose indefinite extension, no further decision on extension need ever be taken by them. Each of them would, however, still retain the right of individual withdrawal from the Treaty in accordance with article X, paragraph 1. In addition, the fact that the Extension Conference had decided to extend the Treaty indefinitely would not mean that it could never be terminated. This could still be done in accordance with the customary international law which is reflected in article 54 of the Vienna Convention on the Law of Treaties (see para. 9 below).

Implications of extension for an additional fixed period

5. If the parties choose extension for a single fixed period, they can set the fixed period at any length they wish. Whatever length they choose, however, the Treaty will automatically terminate at the end of the chosen period. Article X, paragraph 2, provides separately for the possibility of a series of additional fixed periods. Therefore if the parties opt in 1995 for extension by a single

fixed period they could not still decide on a further extension at a subsequent date by the majority specified in article X, paragraph 2. That article only gives authority for the holding of one extension conference with decisions taken by the majority of States parties, and a Treaty amendment would be required to enable a second one to take place. The terms of article VIII, paragraphs 1 and 2, make any amendment to the Treaty very difficult to achieve. In the absence of such an amendment a decision to extend the Treaty further could only be taken by all the States parties.

Implications of extension for additional fixed periods

6. If the parties choose extension for additional fixed periods, they will need to decide on the length of these periods. Article X, paragraph 2, offers no guidance on their possible length. It must therefore be assumed that they could be of any length, and that they could be of the same or varying length. As noted in paragraph 3 above, the parties would also need to agree on the mechanism by which they would decide at the end of each fixed period whether to proceed to the next one. One possibility, which would be consistent with the need for a decision-making mechanism, yet would avoid the danger of unauthorized Treaty amendment, might be a mechanism that would provide for automatic movement from one extension period to the next unless a specified number of countries objected in some prescribed manner.

7. Since the establishment of a mechanism for moving from one period to the next is not explicitly stated in the Treaty, and since such a mechanism would be exceptional (binding parties even if they vote against) any such mechanism should be confined to the minimum necessary to make sense of the Treaty provision, i.e. a mechanism whereby the parties vote to continue (or not). Anything which goes beyond necessary implication is an amendment to the Treaty requiring the exercise of the article VIII mechanism.

Additional extension conference?

8. The Treaty mentions only one extension conference. The idea that extension for a fixed period could also include a further conference option to consider extending the Treaty further is problematic since this would not then be an extension for "an additional fixed period". It would really be more than one period; or if it is one period, the period is not fixed. But in any event, for the reasons given in paragraph 7, such a conference should not be implied without clear wording. This is because such a conference is exceptional as it has the power to bind all parties by a majority vote. In the absence of clear wording, only one such conference can be held, and to impose another is really a Treaty amendment.

Immediate termination

9. Article 42, paragraph 2, of the Vienna Convention on the Law of Treaties provides that: "termination of a treaty ... may take place only as a result of the application of the provisions of the treaty or of the present Convention". There is no provision in the Treaty on the Non-Proliferation of Nuclear Weapons dealing with termination (as opposed to article X, paragraph 2, which deals with

extension). The terms of article 54 of the VCLT mean that immediate termination could only be achieved if all the parties consented to it.

EXTENSION MODALITIES

Extension decision

10. Article X, paragraph 2, says quite clearly that the decision on extension must be taken "by a majority of parties to the Treaty" (i.e. not just by a majority of those attending the extension conference). There is therefore no legal requirement for a consensus decision on extension. Equally, there is no bar to a consensus decision on extension providing that at least a majority of States parties participate in the consensus.

11. Article X, paragraph 2, says nothing about the precise procedure for taking the extension decision, about how it should be recorded, or about what should be done if there is no majority at the conference for any decision on extension. It will therefore be necessary for the extension conference to have rules of procedure which clearly explain how these matters are to be handled within the context of article X, paragraph 2's stipulation that any decision on extension must be supported by a majority of States Parties.

Rules of procedure

12. The rules of procedure used at Treaty Review Conferences in the past are inadequate for these purposes in a number of ways:

(a) It would be possible under these rules for a decision on extension by consensus or voting to be taken without the support of a majority of Parties;

(b) There is no provision in these rules that would enable one to check that a consensus decision on extension included a majority of parties;

(c) There is no provision in the rules to explain what should be done if the Extension Conference is incapable of reaching a decision on extension in accordance with article X, paragraph 2.

Changes to the rules of procedure used at the Treaty Review Conferences are under discussion at the prepcoms with a view to making them suitable for the Extension Conference in 1995.

Recording the extension decision

13. The Extension Document should:

(a) Be distinct from any review document;

(b) Limit itself to a bald statement of the essential facts about which of the extension options set out in article X, paragraph 2, the parties have chosen;

(c) Record clearly which States participated in the consensus decision or how they voted, if a vote is taken (there will then be no room for doubt that a majority of States parties participated in the consensus decision, or voted for the decision, or about which States they were).

Immediate entry into force of the extension decision

14. Once an extension decision has been made in accordance with article X, paragraph 2, it immediately binds all the parties, even those which did not support it. It could not be legitimately argued that any extension decision must subsequently be approved or ratified by States parties before it comes into force for them. There is no such requirement in article X, paragraph 2, in contrast with the ratification requirements in article VIII, paragraph 2, for amendments to the Treaty.

15. Nor could any State party which did not support the extension decision legitimately seek to exercise its individual right of withdrawal from the Treaty as a result of the decision. It cannot be argued that an extension decision taken in accordance with the Treaty is an "extraordinary event".

Continuation in force of the treaty if no extension decision is reached

16. There can be no argument that the Treaty cannot last longer than 25 years in the absence of a decision, since article X, paragraph 2, provides for the decision to be made at a Conference twenty-five years after the Treaty's entry into force, and for the Conference to decide to continue the Treaty's duration. It is therefore also implicit that the Treaty must continue in force while the Conference is in session.

17. As detailed in paragraphs 2-8 above, article X, paragraph 2, of the Treaty envisages only three extension options. Until the extension conference has taken a decision in favour of one of these options the parties will not have fulfilled their obligations under this part of the Treaty. Accordingly, the Conference must remain in existence until such a decision is taken. If taking a decision by the requisite majority proves difficult, the Conference could be adjourned to reconvene later, but it cannot be concluded.

18. There is an argument that the Treaty will be terminated if the Conference fails to reach a decision on extension. This argument is difficult to sustain, since it would in effect amount to a right of termination which is not provided for in the Treaty. It would be erroneous to try to equate the absence of an extension decision with a unanimous decision to terminate it under article 54 of the Vienna Convention (see para. 9 above). But in any case the argument should be a hypothetical one for the reasons set out in the preceding paragraph.

KAZAKHSTAN

[Original: Russian]

[27 February 1995]

1. Having ratified the Treaty on the Reduction and Limitation of Strategic Offensive Arms and the Lisbon Protocol thereto, having acceded to the Treaty on the Non-Proliferation of Nuclear Weapons, and having signed the Safeguards Agreement with the International Atomic Energy Agency, Kazakhstan has demonstrated its commitment to the cause of ridding the world of nuclear weapons.

2. Kazakhstan is in favour of the unconditional and indefinite extension of the Treaty on the Non-Proliferation of Nuclear Weapons. At the same time, believing in the need to strengthen the non-proliferation regime in every way possible and in order to avoid the possible perpetuation of nuclear weapons, Kazakhstan will, at the forthcoming Conference, advocate the conclusion of a comprehensive nuclear-test-ban treaty as an essential element of the regime provided for under the Non-Proliferation Treaty; advocate complete nuclear disarmament; and support the initiative of a number of States concerning the conclusion of an international agreement to halt the production of fissionable material for nuclear weapons.

3. In our view, any formula which would cast doubt on a future treaty could be detrimental to the interests of the regime for the non-proliferation of nuclear weapons.

LATVIA

[Original: English]

[1 March 1995]

1. The Ministry would like to inform the Secretary-General that Latvia considers the Treaty on the Non-Proliferation of Nuclear Weapons to be one of the basic documents of international security.

2. In relation to paragraph 2 of article X of the Treaty, the Government of Latvia considers that the States parties to the Treaty have three options for the extension of the Treaty at the 1995 Review and Extension Conference: indefinite extension, extension for an additional fixed period and extension for additional fixed periods.

3. According to paragraph 2 of article X, any decision on extension of the Treaty shall be taken by a majority of the parties to the Treaty, thus, no consensus decision is required. Any decision on extension of the Treaty is binding for all States parties to the Treaty, including for those that advocated a different extension option.

4. In regard to indefinite extension of the Treaty, Latvia considers that if a majority of States parties to the Treaty decide on indefinite extension of the Treaty, no further decision on extension has to be taken in the future.

5. Considering that the parties may decide in favour of the second option provided by paragraph 2 of article X - extension for an additional fixed period - Latvia wishes to stress that the Treaty would terminate at the end of that fixed period. Therefore, for the Treaty to re-enter into force, another extension conference would be necessary, as paragraph 2 of article X provides for the holding of only one conference. In such a case, the parties would have to consider amending the Treaty.

6. The option of extension for additional fixed periods requires further decisions by the parties. Namely, the parties would have to decide on the length of those periods and on the mechanism which would regulate the continuity of the Treaty at the end of each fixed period.

NIGERIA

[Original: English]

[21 February 1995]

1. Article X, paragraph 2, can be paraphrased as follows: The initial lifespan of the Treaty is 25 years. However in view of the relevance of the Treaty to the maintenance of world peace and security, there is an underlying intention in the text that the Treaty should not die after the expiration of the initial term of 25 years, but rather that its lifespan should be extended to ensure a continuation of the obligations of the States parties to the Treaty in order to avoid proliferation and misuse of nuclear weapons.

2. Article X, paragraph 2, provides for three options. The parties may give the Treaty an indefinite extension, or extend it by an additional fixed period, and provide that at the expiration of that term, the Treaty shall be further extended for additional fixed periods. The decision will be taken by a majority of States parties.

Legal interpretation

3. The legal effect of this provision is that the parties cannot reconvene at the impending Conference to decide that the Treaty should not continue in force. They are obliged by article X, paragraph 2, to extend the life span of the Treaty. All that the article allows them to do is to determine whether the Treaty should continue in force indefinitely or be extended for a specific period or periods.

4. It follows from this that if, during the 1995 Review and Extension Conference, the parties decide on only a specified term of extension, the Treaty lapses at the expiration of that term, unless it is duly amended under the provisions of article VIII. If such an event occurs, the willing parties would have to renegotiate and agree on another Treaty with similar or other terms.

5. In the alternative, the parties may decide during the 1995 Conference to extend the Treaty for several specified periods with the proviso that parties shall convene at the expiration of each specified period to decide whether the Treaty should be further extended by another specified period. This alternative accommodates the conflicting interests of both nuclear-weapon and non-nuclear-weapon States parties.

6. Throughout the history of the Treaty, the non-nuclear States have striven for a non-discriminatory regime like those later established by the 1972 Convention relating to biological weapons and the 1993 Convention relating to chemical weapons, each of which provides for the total elimination of a certain class of weapons of mass destruction. From the beginning of the negotiations on the non-proliferation treaty, these States have called for the elimination of all nuclear weapons and their delivery vehicles, although realizing that this process would be achieved only on a step-by-step basis over a period of years. Therefore, they agreed to accept the language of the preambular paragraphs and article VI, calling for the cessation of the nuclear arms race at an early date and for nuclear disarmament. In addition, they accepted article X, paragraph 2, which permits these goals to be achieved by instalments linking disarmament measures to fixed periods of extension.

7. The review process that will take place during the 1995 Conference will reveal the extent to which the preamble and main provisions of the Treaty have been implemented. Obligations assumed by parties under the Treaty must not only be fulfilled but must be seen to be fulfilled. In the event of failure to implement any of the provisions, it will be right to say so and to take the necessary steps to correct the faults in order that the Treaty may fulfil the objectives and purposes of its elaboration and adoption.

8. For a successful 1995 Review and Extension Conference, it is essential that the nuclear-weapon and the non-nuclear-weapon States parties take a decision that accommodates both their interests and cooperate with each other in order to strengthen the Treaty.

9. The extension anticipated under article X, paragraph 2, could be done by way of a protocol to the existing Treaty, which will then be signed by all parties. It could also be decided by a resolution adopted by the parties by consensus.

PHILIPPINES

[Original: English]

[27 February 1995]

General interpretation of article X, paragraph 2

1. The Philippines takes paragraph 2 of article X of the Treaty on the Non-Proliferation of Nuclear Weapons to mean that there will be only one conference, held 25 years after entry into force, to decide on the mode of extension. This decision will be made by a simple majority of the States

parties. The parties will choose from among three options, namely, whether the Treaty shall (a) continue in force indefinitely or (b) be extended for one additional fixed period or (c) be extended for a series of additional fixed periods.

Views on the different options and actions available

Indefinite extension

2. To the Philippines, this alternative means that the Treaty regime would continue indefinitely without any date of termination. Since the Treaty does not have any provision on its termination, this option means that it can be terminated only by the consent of all parties after consultation with the other contracting States (Vienna Convention on the Law of Treaties, article 54).

Extension by additional fixed period

3. This is taken to mean a single fixed extension, regardless of length of time, which would result in the automatic termination of the Treaty at the end of the extension period. After this termination, the Treaty can no longer be extended by a majority vote of the parties, for by then there would no longer be a Treaty to which the States could claim to be parties.

Extension by additional fixed periods

4. This choice is understood as renewal of the Treaty regime periodically for X number of times.

5. The X number could be indefinite, for example, extension for five years renewable every five years thereafter, or limited, for example, extension for five years, with two (or three, or four, etc.) more renewals of five years each, after which the Treaty will terminate. The issue of indefinite or limited renewals will have to be settled by the Conference.

6. Another issue that the Conference must resolve is whether the periods of renewal should be of equal or of different lengths.

7. This choice also means that before each renewal to the next fixed period, and before the end of each current period, the States parties will determine whether a majority of them does not want the Treaty to continue. If there is no majority opposing another X-year term, another such term would occur. If a majority opposes, then the Treaty is terminated by majority decision. In other words, this option affords a periodic possibility of termination.

8. This alternative, however, does not mean that the States parties could require new agreements, such as a comprehensive test-ban treaty, to be entered into before future extensions could take effect. For imposing such a condition, which is not required under article X, paragraph 2, would be tantamount to amending the Treaty. Amendments are not allowed under article X, only under article VIII, which requires not just a majority of all parties but also the unanimous vote of all nuclear-weapon States and all the members of the Board of Governors of the International Atomic Energy Agency (IAEA).

QATAR

[Original: Arabic]

[14 March 1995]

1. There is a common Arab viewpoint on the question of the extension of the Treaty and the importance of this topic, because of the great importance of the Treaty, which constitutes a fundamental element in international efforts to put an end to the dangers of the proliferation of nuclear weapons, as a step towards their total elimination, and to halt the arms race, which is a burden on States and obstructs their development and economic programmes.

2. On the basis of the above and in affirmation of good intentions concerning the goal of bringing the Treaty to the level of indefinite extensions, we believe that that issue is closely linked to the following:

(a) The necessity of Israel's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, submission of all its nuclear installations and facilities to inspection by and the safeguards system of the International Atomic Energy Agency and destruction of its nuclear stock;

(b) The importance of conducting a comprehensive review of the Treaty;

(c) The necessity of a commitment on the part of nuclear-weapon States not to use or threaten to use their weapons against any non-nuclear-weapon State;

(d) A commitment by nuclear States not to develop their weapons and to divest themselves thereof in accordance with a schedule determined in implementation of article VI of the Treaty.

SOUTH AFRICA

[Original: English]

[31 January 1995]

1. In order to come to the correct interpretation of article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons and to be able to follow the legal arguments in establishing the true meaning of the said article, it is necessary to consider the principles of treaty interpretation very briefly.

2. Although these principles are not absolute formulae, they are tools in the interpretation of treaties and serve as guidelines in finding the true interpretation of a specific provision. When applying these principles of interpretation, each principle on its own will render little help in the interpretation of a provision, but it is their cumulative effect that will in most cases be indicative of the correct and true meaning of a specific provision in a treaty.

3. Any effort to interpret treaty provisions starts with studying the grammatical construction of the text itself. Words must be construed according to their plain and natural meaning. The Vienna Convention on the Law of Treaties of 1969 stipulates in article 31, paragraph 1, that a treaty shall be interpreted in good faith in accordance with the ordinary meaning of the terms. This must be done in context and in the light of the object and purpose of that treaty. Where particular words and phrases are unclear, the interpreter should be guided by the general object and context of the treaty. (Although South Africa is not a party to the Vienna Convention on the Law of Treaties of 1969, the provisions of that Treaty are regarded as customary international law and therefore applicable to all States regardless of their participation in the Convention.)

4. However, if the grammatical interpretation would result in an absurdity or inconsistency with the rest of the treaty, the grammatical meaning of the text could not reflect the true intention of the parties. Due regard should be paid to the intention of the parties at the time of the conclusion of the treaty and particularly the meaning attached by them to the words and phrases at that time.

5. The principles of reasonableness, consistency and effectiveness are other useful tools in interpreting treaty provisions. These entail that, when interpreting a provision, the reasonable meaning of words and phrases which is also consistent with the rest of the treaty is to be preferred. In accordance with the principle of effectiveness, the provision should be interpreted in such a way as to render the treaty most effective and useful. Ambiguous provisions should be given an interpretation that is reasonable, effective and consistent with the rest of the treaty.

6. Recourse may also be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion in order to confirm the meaning of a provision in those cases where the principles of ordinary meaning and of object and purpose leave the meaning of the provision ambiguous, absurd or unreasonable (Vienna Convention on the Law of Treaties, article 32).

7. It is within this framework of set principles that we shall endeavour to find the correct interpretation of article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons.

8. Article X, paragraph 2, leaves three choices open with regard to the extension of the Treaty. The Conference can choose between the following options:

(a) Indefinite extension;

(b) Extension for an additional fixed period;

(c) Extension for additional fixed periods.

9. Applying the rules of interpretation no difficulty exists in understanding what is meant by the term "indefinitely". If such a decision is taken, the Treaty will have an unlimited duration, with the usual option for withdrawal by

a party as provided for in the Treaty, or be terminated by consent of all the parties after consultation with each other as stipulated in articles 42 and 54 of the Vienna Convention on the Law of Treaties.

10. The second option, namely "additional fixed period", means that, as was done when negotiating the Treaty, it is possible for the parties to decide to extend it for a single fixed period only. The time limit of such a fixed period is not indicated and the parties are therefore free to choose any length of time. It is our view that the purpose of the Treaty and the practical modalities thereof, such as the IAEA safeguards required by it, should direct the parties in deciding on the length of such a fixed period. When choosing this option, the parties must realize that after the expiry of the fixed period the Treaty will automatically terminate as there is no provision in it for a second conference to decide on extending the duration of the Treaty.

11. The argument also exists that article X, paragraph 2, can be interpreted in such a way that, after the expiry of the fixed period, article X, paragraph 2, can revitalize itself by being applied once again by the parties to decide on the further extension of the Treaty in a similar way as was done after the first 25 years. Applying the principle of interpretation that the ordinary meaning must be given to treaty provisions, it is quite difficult to see how article X, paragraph 2, can be interpreted to authorize the holding of a second extension conference where the parties can once again decide between the three options. This is in our view too broad an interpretation of article X, paragraph 2, but as indicated below compromises will have to be reached and the political will of the parties will in the end determine the choice of the extension option.

12. The third option leaves parties the choice to decide on extending the Treaty for "additional fixed periods", also without specifying the length or number of the fixed periods. The true meaning of this option of extension for additional fixed periods is not clear as the grammatical interpretation thereof leads to ambiguity. The first observation when interpreting this part of the provision is the fact that the grammatical interpretation of this option leaves little practical difference between the different options. For example: four consecutive fixed periods of five years (option three) and a single fixed period of say 20 years (option two) are similar, while an unlimited number of additional fixed periods (option three) will have the same effect as an indefinite extension (option one).

13. This could not have been the intention of the parties when drafting this article. Terms of a treaty must be interpreted within their context and since the options "indefinite", "period" and "periods" appear in the same context, it warrants the conclusion that the parties must have meant these options to be truly three different extension options.

14. These options can be different only if article X, paragraph 2, is interpreted in such a way that the outcome and effect of the extension options differ. In case of an indefinite extension the Treaty will not terminate unless all the parties have withdrawn from it under the terms of the Treaty or until it is terminated in accordance with the provisions of the Vienna Convention on the Law of Treaties. In the case of an extension for a fixed period the Treaty will terminate at the expiry of that period.

15. This leaves the termination position of the Treaty under the option of the fixed periods unsolved. It is clear that in choosing the option of fixed periods, the parties must have intended the possibility of extending the Treaty for at least two fixed periods to distinguish it from the second option of a single fixed period. Logically this means that some kind of mechanism must exist in order for one fixed period to be followed by the next. Although the Treaty does not explicitly provide for such a mechanism, the need for effectiveness necessitates such an interpretation. To avoid the dangers of unauthorized treaty amendment through interpretation, such a mechanism must be effective and consistent with the rest of the Treaty. It is also important that the envisaged mechanism does not infringe unduly on the sovereignty of the parties and should therefore be limited to the minimum necessary to give a meaningful interpretation to this provision.

16. In search for the true interpretation of the term "fixed periods", guidance could be found in the supplementary means, including the preparatory work of the Treaty. The circumstances of the conclusion of the Treaty are useful to confirm the meaning resulting from the application of the other interpretation rules. From the travaux préparatoires it is clear that the present wording of article X, paragraph 2, was a compromise and stemmed from an Italian proposal that called for a fixed term for the Treaty and the automatic extension for terms equal to its initial duration for those Governments that did not indicate their withdrawal from the Treaty. This proposal was amended by deleting the idea of automatic extension and including the convening of a conference of the parties to decide at the end of the first term whether to prolong the duration of the Treaty.

17. As article X, paragraph 2, provides only for a single extension conference to be held after the expiry of the initial 25-year period, no further extension conferences can be held in terms of the Treaty. The only deduction that can therefore be made is that, if the parties should decide on the fixed periods option, it should be possible for those periods to follow each other. However, to differentiate this option from the indefinite extension option explained above, a decision-making mechanism is needed to trigger the succession of the fixed periods.

18. The parties accepted the idea of the periodic review of the operation of the whole Treaty and created the mechanism of review conferences for this purpose (art. VIII, para. 3). The fact that no explicit provision was made to this effect in respect of the fixed periods option does not preclude one from interpreting the Treaty in such a way that the mechanism needed for the effective implementation of the fixed periods option can also be covered under the review conferences. At the time of a review conference held near the end of a fixed period, the parties should be able to decide on the future of the Treaty. This interpretation is in fact consistent with the idea of periodic review of the Treaty. Such a decision-making mechanism is also consistent with the idea contained in article X, paragraph 2, that the parties should be able to decide by majority vote on the continuation of the Treaty. The principle of effectiveness also dictates that this interpretation is the only reasonable one.

19. The question now remains as to the nature of the decision-making mechanism. It is our view that it will be possible to have either a "negative" mechanism or

a "positive" mechanism. The choice between these two mechanisms will greatly depend on the political realities and the need for compromise between the different interest groups within the Treaty, rather than what is regarded as being strictly correct from a legal point of view.

20. The "negative" mechanism entails that it would be possible for each fixed period to follow the previous one automatically, unless the parties decide at the time of the review conference held near the end of any of the fixed periods not to continue with the Treaty. This means that the duration of the Treaty will be extended automatically unless the parties decide against the automatic roll-over from one period to the next. It also does not mean that a decision of the parties is needed at the end of each fixed period. The Treaty will automatically continue through the various fixed terms until the parties decide not to extend it any further.

21. A "positive" mechanism on the other hand is one where the parties will have a say in the continuation of the Treaty at the end of each of the fixed periods. The Treaty will continue to the next fixed period only if the majority of the parties so decide. If at the review conference near the end of each fixed period the majority of the parties vote affirmatively in this regard, the duration of the Treaty will automatically be extended to the next fixed period. The "positive" mechanism is in our view also consistent with the idea of constant review of the Treaty and with the idea contained in article X, paragraph 2, that the parties can "... decide whether the Treaty shall continue in force ...", in other words, a positive decision. A decision-making process similar to the one now suggested is therefore already part of the Treaty. If all the parties accept and agree on this interpretation, this interpretation will also be acceptable under the Vienna Convention on the Law of Treaties as a case of change through subsequent practice in the application of the treaty (art. 31, para. 3 (b)).

22. It is therefore our submission that the parties intended to create three truly different extension options in terms of article X, paragraph 2. Each of these options as explained above has different legal implications and results which should be carefully considered by the political decision makers when deciding which option to choose. However, it is also true that the Treaty was a product of political bargaining and compromise. There is little doubt that the decision to be taken in 1995 on the duration of the Treaty will likewise be brought about by the political will of the parties to reach a compromise that will best serve their common goal - the prevention of the spread of nuclear weapons.

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SURINAME

[Original: English]

[13 March 1995]

1. Article X, paragraph 2, obliges States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, to decide, during the forthcoming 1995 Review Conference, on the extension of that Treaty, which can be for an indefinite period of time or can be determined in advance for one or more extended periods.

2. In case the States parties to the Treaty fail to formulate a decision with regard to the extension of the Treaty within the specified time, this need not render the Treaty inoperative. The Government of the Republic of Suriname is of the view that paragraph 2 of article X does not deny the States parties to the Treaty the possibility of adjourning the Conference and reconvening at a later time. States parties to the Treaty will then have to take a formal decision with regard to the adjournment of the Conference as well as its duration.

3. If States parties to the Treaty opt for an extension of only one period then the validity of the Treaty will expire when that period has elapsed.

4. The extension of the validity of the Treaty before it expires will be possible only with the consent of all the States parties to the Treaty and through the necessary amendments to the Treaty.

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GENERAL AND COMPLETE DISARMAMENT

Report of the Secretary-General

Addendum

CONTENTS

Page

II. REPLIES RECEIVED FROM GOVERNMENTS

Libyan Arab Jamahiriya 2

* A/50/50.

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LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]

[13 April 1995]

Interpretation by the Libyan Arab Jamahiriya of Article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons submitted in conformity with paragraph 2 of General Assembly resolution 49/75 F

The Libyan Arab Jamahiriya supports the working paper submitted by the Group of Non-Aligned and Other States entitled "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons: Options and Action Available" contained in document NPT/CONF.1995/PC.IV/4. The Libyan Arab Jamahiriya would like to make it clear that its legal interpretation of article X, paragraph 2, of that Treaty is that the Conference of the Parties to the Treaty, to be held in New York from 17 April to 12 May 1995 in order to decide upon the extension of the Treaty, has the following three options:

(a) Indefinite extension;

(b) Extension for an additional fixed period;

(c) Extension for additional fixed periods.

It has been determined that the eventual decision of the Conference shall be taken by a majority of the Parties to the Treaty, since it will otherwise conflict with article X, paragraph 2, of the Treaty, which is unambiguous. We have no need to resort to interpretations which conflict with the text, but should deal with the matter in the framework of respect for the wishes of the parties to the Treaty and concern for their interests, in order to ensure the fulfilment of the purposes set out in the preamble and implement the provisions of article VI of the Treaty.

During their forthcoming Conference, the States parties to the Treaty must negotiate in good faith and make every possible effort to achieve the aims of the Treaty, while respecting the national security interests of each party.

Should it appear to them, as is in fact very likely, that an indefinite extension of the Treaty is not possible at the present time, since the purposes paving the way to such an extension have not been achieved, the Conference may take the measures at its disposal to arrange a temporary extension, leaving the door open for an indefinite extension once the necessary preparations have been made.